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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,622	08/17/2001	William R. Kowalski	2001-5	6302

7590

11/02/2006

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EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/932,622

Applicant(s)

KOWALSKI, WILLIAM R.

Examiner

Kelly Mahafkey

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-11,13,14,17,18,20,24 and 103-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-11,13,14,17,18,20,24 and 103-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Amendment filed August 16, 2006 has been entered.

Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, and 103-109 are pending.

#### ***Examiner Note***

It is noted that the response for this application, 09/932,622 filed August 6, 2006 contains a heading with an incorrect application number 10/778,784. It is requested that all future correspondence contain the correct application number throughout. It is further noted that the drawings, received January 17, 2006 are missing page 9/10.

#### ***Claim Objections/Claim Rejections - 35 USC § 112***

The previous rejections regarding the claim objections and 112 rejections have been withdrawn in light of applicant's amendments filed August 16, 2006.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The previous 102 rejection of claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24, and 103-109 have been withdrawn in light of applicant's amendments filed August 16, 2006. A new rejection, as necessitated by amendments is included herein.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. It is noted that the rejection below was necessitated by amendments.

Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, and 103-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisateru in view of Yamaoka et al. (US 5484619).

Hisateru teaches of a process for preserving and storing fish, including tuna, in which carbon dioxide is dissolved underwater and the fish blood of the circulatory system circulates the carbon dioxide throughout the fish body. Hisateru teaches that the carbon <sup>CO<sub>2</sub></sup> ~~monoxide~~ places the fish in a ~~coma~~ and preserves the fish by binding to the fish proteins. Hisateru teaches that the fish can be frozen after treatment with the gas. Refer specifically to pages 1-6.

Hisateru, however, does not explicitly teach the preserving gas as a smoke which includes carbon monoxide, the preserving gas as partially purified gas which is super purified by the animals' membranes, and bleeding the animal before its heart stops pumping.

Regarding the preserving gas as a smoke that contains carbon monoxide, Yamaoka et al. (Yamaoka) discloses of a method for preserving fish and meat. Yamaoka teaches of a smoke, which contains both carbon monoxide and carbon dioxide. Yamaoka teaches that the combination of the carbon monoxide and carbon dioxide provides for maximum sterilization, decomposition, and discoloration-preventing

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effects. Refer specifically to Abstract, Figure 2B, Column 1 lines 13-49 and Column 2 lines 1-10, 40-63. Because Hisateru teaches of preserving fish with carbon dioxide gas, and since Yamaoka teaches that smoke with both carbon monoxide and carbon dioxide provides maximum preserving effects for fish, one would have been motivated to include a carbon monoxide and carbon dioxide smoke, in the preservation method as taught by Hisateru, in order to obtain optimal preservation of the fish (i.e. meat).

Regarding the preserving gas as partially purified gas which is super purified by the animals' membranes, Hisateru in view of Yamaoka, teach of entraining a treatment smoke through water (i.e. partially purifying a treatment gas), and the smoke as entering and passing throughout a fish body. Since the smoke would necessarily pass through the membranes of the fish upon exposure and entry into the fish body, the references teach of super purifying the smoke with the fish membrane, thus preventing smoke flavor from entering the meat of the fish.

Regarding bleeding of the animal before its heart stops pumping, it was known in the art at the time the invention was made that storage and preservation of fish included the step of bleeding the fish. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the step of bleeding the fish before the heart stopped pumping in order to use the energy of the fish to minimize cost and help effectively complete the preservation and storage process.

***Response to Arguments***

Applicant's arguments filed August 6, 2006 have been fully considered but they are not persuasive.

Applicant argues that the Hisateru reference is non-enabling because it does not teach of a specific amount of CO<sub>2</sub> that the fish is exposed to. However, it would be expected that one of ordinary skill in the art would be able to determine an appropriate amount of CO<sub>2</sub> for the fish to be exposed to, and thus, the reference would be enabling. Furthermore, it is noted that the aspect of the reference which the applicant suggest causes the reference to be non-enabling is not claimed by applicant.

Applicant argues that neither the Hisateru nor Yamaoka references teach of using the animals membranes to super-purify partially purified smoke. Applicant is referred to the new rejection above, as necessitated by amendments.

In response to applicant's argument that Yamaoka may not be incorporated into Hisateru, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Since Hisateru teaches of preserving fish with gas and because Yamaoka teaches of a method of maximizing the preservation of fish with gas, one would have been motivated to combine the references.

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**Conclusion**


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kelly Mahafkey  
Examiner  
Art Unit 1761

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**